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JUN 16 2008

Docket No.: 0465-1081P
(PATENT)

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant:	Jong Seok KIM et al.	Conf. No.:	4939
Appl. No.:	10/720,077	Group:	1792
Filed:	November 25, 2003	Examiner:	J. M. Heckert
For:	DRUM TYPE WASHING MACHINE		

REPLY BRIEF UNDER 37 C.F.R. § 41.41

MS Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

As required under § 41.41(a), this Brief is filed within two months of the Examiner's Answer dated April 16, 2008. A request for an oral hearing is also being filed on even date herewith.

The Examiner's Answer includes new grounds of rejection. The new grounds of rejection to be reviewed on appeal are as follows:

1. Claims 5-7 and 9-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,158,257 to Ryan et al. ("Ryan") in view of U.S. Patent 6,574,997 to Mayer et al. ("Mayer"). The Office admits that Ryan does not disclose the dampening device arrangement recited in claim 5, i.e., a damper comprising (1) first and second dampers provided at left and right sides under a bottom of the tub to attenuate the vertical and horizontal vibrations; and (2) a third

JTE/RJW/slb

Application No.: 10/720,077
Reply Brief

Docket No. 0465-1081P
Page 2

damper provided in the rear of the tub to attenuate the front-to-rear vibration. However, the Office cites *In re Japikse*, 86 USPQ 70 (CCPA 1950), for the proposition that the rearrangement of parts was held to have been obvious, states that Ryan already discloses multiple dampers, and concludes that the location of their attachment is within the purview of those skilled in the art. The Office also states that Mayer shows a suspension assembly 7 located in the rear of the tub, and because of this, that the inclusion of a damper connected to a tub and cabinet located in the rear of the tub is known, and concludes that it would be obvious to modify the subassemblies of Ryan and include an additional damper in the rear of the tub, as disclosed by Mayer, to attenuate vibrations.

2. Claims 5 and 7 stand rejected under 35 USC 102(c) as being anticipated by U.S. Patent 6,574,997 to Mayer et al. ("Mayer"). The Office states that Mayer discloses a washing machine with a cabinet 6, washer assembly 2 including a tub and drum, as well as a drive motor 3, that a rotational shaft is inherent, and discloses both first and second dampeners 11 located at left and right sides of the bottom of a tub and a dampening device located in the rear of the tub.

3. Claims 8 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ryan in view of Mayer and further in view of U.S. Patent 5,907,880 to Durazzani et al. ("Durazzani").

In response to the new grounds of rejection, Appellants continue to rely on the arguments presented in the Appeal Brief which traverse the previous rejections of record. Appellants also respectfully submit that Mayer does not buttress the previous rejections of record. Rather, Appellants respectfully submit that Mayer actually detracts from the previous rejections of record

JTE/RJW/slb

Application No.: 10/720,077
Reply Brief

Docket No. 0465-1081P
Page 3

by teaching away from the claimed invention and by teaching away from the proposed modification of Ryan.

Mayer does not include either of its suspension assemblies 7 in any of its claims. Nor does Mayer disclose that any of its suspension assemblies 7 form the basis of any objects of its invention. Instead, Mayer's invention is directed to providing a pivotable connection device for pivotable connection of a friction damper to the machine frame of a washing machine with a washer assembly to enable a pivoting connection that corresponds to one of the individual components of the tumbling motion of the water assembly (col. 1, lines 60-65).

Most significantly, Mayer's suspension assemblies are disclosed as tension springs which are provided "in a way that leaves the washer assembly 2 'free to vibrate'" (see col. 2, lines 23-42).

In other words, Mayer's suspension assembly tension springs 7 are explicitly disclosed to permit vibration. There is no disclosure whatsoever that Mayer's suspension assembly tension springs 7 dampen vibrations of the washer assembly 2 or that Mayer's suspension assemblies are dampers.

Another way of saying this is that Mayer does not disclose providing a third dampener whatsoever, let alone at the rear of its tub (all of Mayer's spring assemblies are shown to be located around the outer side surface of the tub and not in the rear of the tub), or serve as a basis for providing a third dampener at the rear of Ryan's tub. Instead, Mayer discloses providing tension spring assemblies to permit free vibration of a washer assembly (col. 2, lines 40-42).

JTE/RJW/slb

Application No.: 10/720,077
Reply Brief

Docket No. 0465-1081P
Page 4

So, Mayer clearly does not anticipate the invention recited in claims 5 and 7, which positively recites a third damper provided in the rear of the tub to attenuate the front-to-rear vibration.

Also, if one of ordinary skill in the art were to modify Ryan in view of Mayer, as proposed in some of the new rejections, one would provide a suspension assembly tension spring 7 in Ryan to do just the opposite of what is claimed, i.e., to permit vibration of the tub instead of dampening it.

In other words, the new rejections do not make out a *prima facie* case of anticipation of claims 5 and 7 by Mayer, or a *prima facie* case of obviousness of claims 5-12 because the art relied on would not provide a third damper in the rear of the tub. Instead, the art relied on provides a suspension assembly that permits vibration rather than dampens it. Thus, the proposed combinations of references used in the rejections under 35 USC §103, and the Mayer reference, used in the rejection based on 35 USC §102(e), actually teach away from the claimed invention instead of rendering it obvious.

Accordingly, the newly presented rejections of record do not make out a *prima facie* case of either anticipation of, or obviousness of, the claimed invention.

Reconsideration and reversal of these new rejections of record are respectfully requested.

In reply to the Examiner's responses to arguments found on pages 5 and 6 of the Examiner's Answer, Appellants respectfully present the following arguments.

The Examiner's reliance on Ryan's statement that preferences for the exact number of the tub suspension subassemblies 18 and 20, the location of their attachment points to the tub 14 and cabinet 16, and the stiffness and other structural parameters of each cylinder 44, rod 46, piston

JTE/RJW/slB

Application No.: 10/720,077
Reply Brief

Docket No. 0465-1081P
Page 5

48, and spring 50 may be determined by computer simulation and/or experiment for a particular horizontal axis clothes washing machine 10, as is within the purview of those skilled in the art, would render the claimed invention obvious, is speculation at best. It is well settled that a rejection under 35 U.S.C. § 103 cannot properly be based on speculation but must be based on objective factual evidence of record. *See In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). *See, also, In re GPAC Inc.*, 35 USPQ2d 1116 at 1123 (Fed. Cir. 1995) and *Ex parte Haymond*, 41 USPQ2d 1217 at 1220 (Bd. Pat. App. & Int. 1996).

The statement that Appellants have not provided a showing of unexpected results improperly tries to shift the Office's burden of making out a *prima facie* case of obviousness to Appellants.

The statement that Appellants have not provided a showing of how the claimed invention is unobvious also improperly tries to shift the Office's burden of making out a *prima facie* case of obviousness to Appellants.

The statement that it is clear from Mayer that it was known at the time of the invention to locate a dampening device in the rear of a washing machines is irrelevant to the claimed invention, which does not recite that language. Actually, independent claim 5 positively recites a combination of features, including a damper provided between the tub and the cabinet to attenuate vertical, horizontal, and front-to-rear vibrations transferred to the tub by a rotation of the drum, the damper comprising first and second dampers provided at left and right sides under a bottom of the tub to attenuate vertical and horizontal vibrations, and a third damper provided in

JTE/RJW/slb

**RECEIVED
CENTRAL FAX CENTER**

JUN 16 2008

Application No.: 10/720,077
Reply Brief

Docket No. 0465-1081P
Page 6

the rear of the tub to attenuate front-to-rear vibrations. Moreover, as discussed above, Mayer contains absolutely no disclosure of a third damper provided in the rear of the tub to attenuate front-to-rear vibrations, as claimed.

With respect to claims 8 and 12, Ryan teaches away from using hinged assemblies by stating that its non-hinged subassemblies 18 and 20 are "softer" (more compliant) than conventional tub suspension assemblies. This is enough to teach away from the proposed modification of Ryan in view of Durazzani to use hinged subassemblies.

CONCLUSION

Appellants respectfully submit that claims 5-12 are patentable over the applied art and that all of the rejections of record should be reversed.

JTE/RJW/slb

Application No.: 10/720,077
Reply Brief

Docket No. 0465-1081P
Page 7

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Dated: June 16, 2008

Respectfully submitted,

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